



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
NATIONAL MARINE FISHERIES SERVICE
Northeast Fisheries Science Center
166 Water Street
Woods Hole, MA 02543-1026

April 28, 2006

MEMORANDUM FOR: AIS Observers

FROM: David Potter
Branch Chief, FSB

SUBJECT: Reporting Refusals for Failure
To Meet Safety Standards

This memo is to notify you of the new safety requirements and how to report vessels that fail to meet safety standards.

Do not sail aboard vessels without a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination (CFVSE) decal or those that do not meet the Pre Trip Vessel Safety Checklist.

Please follow the enclosed protocols to report vessels that do not meet the safety requirements.

Background

On May 18, 1998, a Final Rule relating to Observer Health and Safety was published in the Federal Register (pages 27213 to 27218). One of the requirements listed in the final rule stated (at 50 CFR 600.746(c)) that a vessel would be deemed inadequate or unsafe to carry an observer if it did not display a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination (CFVSE) decal.

The final rule also stated (at 50 CFR 600.746(f)) that "A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from fishing without observer coverage."

The first application of this requirement occurred in June of 2000 via a permit holder letter to limited access scallop vessels. The permit holder letter advised these scallop vessels that if the vessel wanted to fish in the closed area exemption program the vessel would have to have a current CFVSE decal in order to carry an observer. If the vessel was selected to carry an observer but did not have the CFVSE decal, the vessel could not participate in the fishery.



In October of 2005 Northeast Regional Administrator Patricia Kurkul notified permit holders (via a permit holder letter) fishing for Northeast multispecies groundfish, Atlantic mackerel, squid, butterfish, Atlantic sea scallop, monkfish, skates, summer flounder, scup, black sea bass, Atlantic bluefish, Atlantic herring, spiny dogfish, Atlantic deep-sea red crab and tilefish that as of May 1, 2006, all federally permitted fishing vessels and/or those participating in Category I or Category II fisheries under the Marine Mammal Protection Act (MMPA) that require mandatory observer coverage will be required to successfully complete the Commercial Fishing Vessel Safety Examination and display a current safety decal issued within the last two years.

The letter from Regional Administrator Kurkul also notified the permit holders that vessels that failed to satisfy the new safety requirement and were then selected for observer coverage would be deemed unsafe for purposes of carrying an observer. Permit holders were also notified that if a vessel fished without an observer onboard after being selected (due to being deemed unsafe due to the lack of the CFVSE decal) NOAA Fisheries Enforcement or the USCG may take enforcement action against the vessel operator and/or owner.

Permit holders were also notified that a waiver to the requirements may be granted by the agency as long as the USCG deficiency list, provided by the inspector to a failing vessel, included only marine sanitation equipment. Waivers will be granted through NOAA Fisheries Enforcement by contacting Special Agent Thomas Gaffney at (508) 495-2147 or by email Tom.Gaffney@noaa.gov.

The observer program has also determined that vessels that have a current CFVSE decal but lack vital safety equipment (life raft, fire extinguishers, etc.) will also be classified as an inadequate or unsafe vessel and will therefore also be unable to fish if selected to carry an observer until the safety issue has been corrected.

Education & Outreach

Numerous education and outreach efforts have been made in order to insure that the commercial fishing community is aware of the CFVSE decal requirement. The following is a list of the some of the education and outreach efforts that have been undertaken.

An October 2005 permit holder letter viewable at:
<http://www.nero.noaa.gov/nero/nr/nrdoc/nrphlo5/05vsc.pdf>

A NOAA website posting viewable at:
<http://www.nero.noaa.gov/nero/hotnews/vsc/index.html>

A NOAA news release in November 2005 viewable at:
http://www.nefsc.noaa.gov/press_release/2005/nr0519.htm

A NERO Spring/Fall 05 Newsletter article viewable at:
<http://www.nero.noaa.gov/nero/outreach/summer-fall05.pdf>



A Fisheries Sampling Branch (FSB) website posting viewable at:
<http://www.nefsc.noaa.gov/femad/fishsamp/fsb/Safety%20Requirements/safetyrequirements.htm>

An article in the November 2005 edition of Commercial Fisheries News viewable at:
http://www.fish-news.com/cfn/CFN_pages/editorial_11_05/NMFS_safety_decals.html

NOAA Fisheries Enforcement broadcast the following VMS message to all VMS units on January 31, 2005 "REMINDER! On 05/01/06 vessels required to carry an observer must display a current USCG Commercial Fishing Vessel Safety Decal."

NOAA weather radio broadcast began broadcasting a message regarding the CFVSE decal requirement on March 1, 2006. This broadcast will continue through May 1, 2006.

Presentations about the requirement have been a part of the USCG & NOAA Fisheries Enforcement reports at the last three regional council meetings (two NEFMC, one MAFMC.)

NOAA Fisheries certified observers have been provided with flyers to distribute regarding the new requirement.

A notice regarding the CFVSE decal requirement was placed in the March 2006 edition of Commercial Fisheries News.

Your Responsibilities

Do not sail aboard a vessel without a CFVSE decal. You will be putting the vessel in jeopardy of violations if you do. Observers will be placed on probation and possible termination if it is found that they have sailed on vessels that have not met the safety standards.

You must report non-compliant vessels immediately. We will work with NOAA Enforcement and the USCG to bring the vessel into compliance. Please follow the guidelines provided below. Safety Refusal Report packets have been enclosed for your use which includes a copy of the reporting guidelines, two enforcement letters, and a blank Refusal Report.

Once a vessel has been determined to be unsafe to deploy either due to a lack of a current decal or missing or expired safety devices and the safety measures can not be corrected immediately:

- 1) Complete a Pre-Trip Vessel Safety Checklist;
- 2) Fill out one letter to the captain citing the deficiency;
- 3) Notify the captain and give him/her the completed letter of deficiencies;
- 4) Disembark from vessel and do not complete a trip on this vessel until corrective measures have been met;
- 5) Complete a second letter citing the deficiencies to keep for the record;
- 6) Complete a Refusal Report with your signature and date;
- 7) Contact your Area Coordinator by phone once off the vessel;



- 8) Email the Program Manager within 24 hours detailing the safety refusal and attaching an electronic copy of the Refusal Report; and
- 9) Fedex the safety refusal documents to NMFS within 48 hours (same address as your trips and can be included with other trips), including the letter citing the deficiency, the Pre-Trip Vessel Safety Checklist, and a signed Refusal Report.

It is critical to report these safety deficiencies in a timely manner and to have complete and accurate documentation of the event. An electronic version of this memo and associated enclosures are available on the FSB website at: <http://www.nefsc.noaa.gov/femad/fsb/>. There is also a pdf version of the Refusal Report that you can use electronically to type and email the refusal.

Please contact David Potter at 508-495-2262 or Amy Van Atten at 508-492-2266 or by email at Amy.Van.Atten@noaa.gov if you have any questions or concerns.

Enclosures:

- ▶ 30 Safety Refusal Report Packets (Guidelines, 2 Enforcement Letters, Refusal Report)
- ▶ 30 Pre Trip Vessel Safety Checklists
- ▶ 30 “Don’t Lose Valuable Fishing Time” Flyers

